

STAFF REPORT

12

A 5

10/24/19

PRC 3981.1

A2130

S 1

M.J. Columbus

AMENDMENT OF LEASE

LESSEE:

LCOF Lake Tahoe Investment LLC, a Delaware limited liability company

SUBLESSEE:

Action Motorsports of Tahoe, Inc., a California corporation

SECURED-PARTY LENDER:

PFP 2019-5, Ltd., an exempted company incorporated under the laws of the Cayman Islands with limited liability

AREA, LAND TYPE, AND LOCATION:

Sovereign land in Lake Tahoe, adjacent to 3411 Lake Tahoe Boulevard, South Lake Tahoe, El Dorado County.

AUTHORIZED USE:

LEASE: Continued use, maintenance, and operation of an existing commercial marina facility known as “Timber Cove Lodge Marina” consisting of a pier with a restaurant building and retail building, an fueling facility on the pier, 80 mooring buoys, two personal watercraft string lines, and two channel markers.

SUBLEASE: Operation of personal watercraft, boat and buoy rentals; fishing and boat charters; and gasoline and retail sales.

LEASE TERM:

LEASE: 25 years, beginning May 19, 2011, ending May 18, 2036.

SUBLEASE: 10 years, beginning May 1, 2018, ending April 30, 2028.

CONSIDERATION:

\$65,234 per year, against 5 percent of the gross annual income derived from the commercial activities of mooring, boat and personal watercraft rentals and retail sales; 3 percent of the gross annual income derived from food and beverage sales; and one and one-half cents per gallon of fuel sold annually on or over the

STAFF REPORT NO. 12 (CONT'D)

Lease Premises to a maximum of 100,000 gallons and two cents per gallon thereafter, with the State reserving the right to fix a different rent periodically during the lease term, as provided in the lease.

PROPOSED LEASE AMENDMENT:

Amend the lease to:

1. Authorize LCOF Lake Tahoe Operating, LLC, a Delaware limited liability company, as a Co-Lessee.
2. Authorize Linchris Hotel Corporation as the property management company with responsibility for the day-to-day operations of the lease premises.

REISSUANCE OF ENCUMBRANCING AGREEMENT:

Replace the prior Encumbrancing Agreement with one in the same form, but that recognizes PFP 2019-5, Ltd., an exempted company incorporated under the laws of the Cayman Islands with limited liability, as the current secured-party lender, recognizes LCOF Lake Tahoe Operating, LLC as a Co-Lessee, and refers to Linchris Hotel Corporation as the operator.

STAFF ANALYSIS AND RECOMMENDATION:

Authority:

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

Public Trust and State's Best Interests Analysis:

On February 4, 2019, the Commission authorized a Termination of an Agreement and Consent to Encumbrancing of Lease; and Authorization of Assignment, Endorsement of a Sublease, and an Agreement and Consent to Encumbrancing of Lease for an existing commercial marina known as "Timber Cove Marina" to the Lessee ([Item C26, February 4, 2019](#)). That lease will expire on May 18, 2036. The Lessee is requesting approval of an amendment of Lease No. PRC 3981.1 to add a co-lessee and authorize Linchris Hotel Corporation to function as the on-site property management company.

The Encumbrancing Agreement authorized by the Commission at the February 4, 2019 meeting consented to LCOF Lake Tahoe Investment, LLC, to encumber the lease interest by deed of trust in favor of PFP Holding Company VI, LLC, a Delaware limited liability company. By letter dated June 4, 2019, the Commission's Executive Officer consented to the assignment of this security interest to PFP 2019-5, Ltd., an exempted

STAFF REPORT NO. 12 (CONT'D)

company incorporated under the laws of the Cayman Islands with limited liability. This consent was authorized by paragraph (B)(6)(a) of the Encumbrancing Agreement because the transferee is a "Secured Party Affiliate" under paragraph (A)(4) of the Encumbrancing Agreement. The parties have agreed that reissuing the Encumbrancing Agreement naming the new secured-party lender and the new co-lessee and referencing the property management company is appropriate given the number of changes in the business structure. All other terms and conditions of the Encumbrancing Agreement shall remain in full force and effect.

The existing lease will not result in a change in the use of, or impacts to, Public Trust resources, requires the Lessee to insure the lease premises and indemnify the state for any liability incurred as a result of the Lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved. For all the reasons above, staff believes the authorization of this amendment and reissuance of the Encumbrancing Agreement does not substantially interfere with the common law Public Trust Doctrine at this location, at this time, and for the foreseeable term of the lease; and is in the best interests of the State.

OTHER PERTINENT INFORMATION:

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction and Strategy 1.3 to promote, expand, and enhance appropriate public use and access to and along the State's inland and coastal waterways.
3. The lease provides that the Lessee shall not store any personal items or construct any improvements within the Public Trust easement that may impair public uses for access, navigation, or recreational uses within the easement.
4. Authorization of the lease amendments and reissuance of the Encumbrancing Agreement are not projects as defined by the California

STAFF REPORT NO. 12 (CONT'D)

Environmental Quality Act because they are administrative actions that will not result in direct or indirect physical changes in the environment.

Authority: Public Resources Code section 21065 and California Code of Regulations, title 14, sections 15378, subdivision (b)(5).

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

PUBLIC TRUST AND STATE'S BEST INTERESTS:

Find that the proposed amendments and reissuance of the Encumbrancing Agreement will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location at this location, at this time, and for the foreseeable term of the lease; are consistent with the common law Public Trust Doctrine; and are in the best interests of the State.

AUTHORIZATION:

1. Authorize the amendment of Lease No. PRC 3981.1, a General Lease – Commercial Use, effective October 24, 2019, to authorize LCOF Lake Tahoe Operating, LLC, a Delaware limited liability company as Co-Lessee; and authorize Linchris Hotel Corporation as the property management company; all other terms and conditions of the lease will remain in effect without amendment
2. Reissue the prior Encumbrancing Agreement, recognizing PFP 2019-5, Ltd., an exempted company incorporated under the laws of the Cayman Islands with limited liability as the current Secured-Party Lender, recognizing LCOF Lake Tahoe Operating, LLC, a Delaware limited liability company as Co-Lessee, and recognizing Linchris Hotel Corporation as the property management company; all other terms and conditions of the Encumbrancing Agreement remain in effect without change.

EXHIBIT A

PRC 3981.1

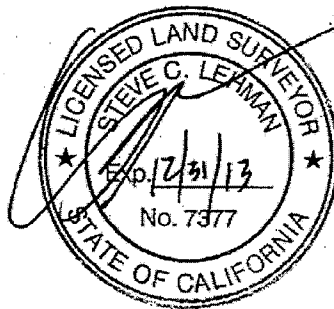
LAND DESCRIPTION

A parcel of submerged land lying in the bed of Lake Tahoe, adjacent to fractional Section 33, Township 13 North, Range 18 East, M.D.B.&M., as shown on Official Government Township Plat approved July 13, 1867, County of El Dorado, State of California, more particularly described as follows:

BEGINNING at a point on the line of the historic Low Water Mark, as depicted on sheet 3 of those maps entitled "Survey of the Low Water Mark on the Shore of Lake Tahoe", on file at the California State Lands Commission, Sacramento Office, said point lying distant N 68°43'51" E 37.98 feet from Station 27 as shown on said map; thence along said line of Low Water S 68°43'51" W 37.98 to said Station 27; thence S 64°11'10" W 451.69 feet; thence leaving said line of Low Water Mark N 25°48'50" W 1790.88 feet; thence N 70°25'49" E 681.76 feet; thence S 19°34'11" E 1730.00 feet to the POINT OF BEGINNING.

END OF DESCRIPTION

Prepared 1/4/2012 by the California State Lands Commission Boundary Unit.



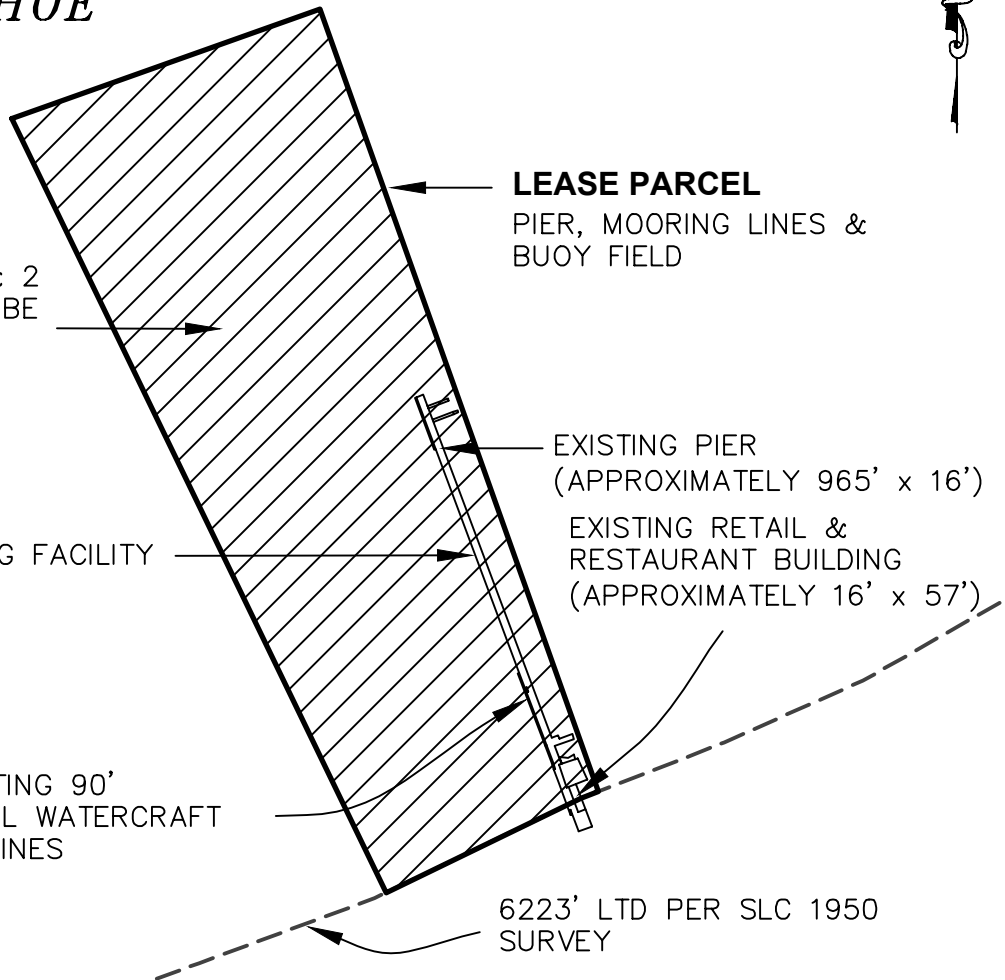
NO SCALE

SITE

LAKE TAHOE



80 EXISTING BUOY'S & 2 CHANNEL MARKERS TO BE PLACED WITHIN LEASE PARCEL BY APPLICANT



3411 LAKE TAHOE BLVD., SOUTH LAKE TAHOE

NO SCALE

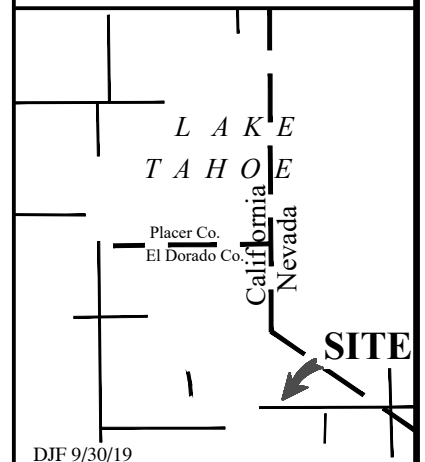
LOCATION



MAP SOURCE: USGS QUAD

Exhibit B

PRC 3981.1
 LCOF LAKE TAHOE
 INVESTMENT, LLC
 APN 027-090-25
 GENERAL LEASE -
 COMMERCIAL USE
 EL DORADO COUNTY



DJF 9/30/19

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.